



New South Wales

Bail Regulation 2008

under the

Bail Act 1978

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Bail Act 1978*.

JOHN HATZISTERGOS, M.L.C.,
Attorney General

Explanatory note

The object of this Regulation is to remake, with some changes, the *Bail Regulation 1999*, which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The major changes in substance are the omission of certain forms that were included in the *Bail Regulation 1999* (those documents are now to be in the forms approved by the Attorney General) and the removal of a provision that prescribed a number of places for the purposes of section 26 (2) of the Act, being places that are excluded from the application of a provision regarding the power of the District Court to grant bail.

This Regulation also makes provision with respect to the following:

- (a) the periods in respect of which bail may be granted,
- (b) the information that must be given to a person in custody, detailing the person's entitlements to, or eligibility for, police bail, and the form of acknowledging that such information was given,
- (c) the facilities that must be provided to a person who is in police custody,
- (d) the manner of application for court bail, for review of a bail decision and for alteration of bail conditions,
- (e) provisions regarding the giving of notice of bail decisions to informants in the case of alleged domestic violence offences, to victims in the case of alleged sexual assaults or personal violence offences and to any specially affected persons in relation to whom a special bail condition has been imposed,
- (f) provisions regarding the giving of notice regarding the place and time at which an accused person has undertaken to appear,

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- (g) provisions for the determination of whether a person is an acceptable person for the purposes of certain bail conditions and the form of acknowledgment that an acceptable person may be required to be given in relation to a condition of an accused person's bail,
- (h) the manner in which reasons for a bail condition must be recorded by an authorised officer or by the court,
- (i) provisions regarding the giving of sureties and the provision of security or money under a bail agreement,
- (j) provisions regarding the making of applications for the discharge of sureties under bail agreements and for the apprehension of accused persons after such applications are made,
- (k) the information that must be provided to a person in a notice of a court's intention to revoke the person's bail on the ground that the person's bail security is no longer intact,
- (l) the procedure for the making of requests for the review of bail decisions,
- (m) in relation to the enforcement of bail agreements—the appropriate State authorities, the way in which certain notices are to be given and the information to be contained in certain of those notices,
- (n) the information that must be provided to an accused person concerning an adjournment,
- (o) the information that must be provided to an accused person concerning the person's rights to the review of a bail decision,
- (p) the form of notice to be given by the custodian of a person in custody after the grant of bail,
- (q) particulars of orders in bail decisions that must be endorsed on a form of warrant or notified to the governor of the correctional centre at which an accused person is detained,
- (r) the notification that must be given of bail undertakings, or of compliance with bail conditions, to the governor of the correctional centre at which an accused person is detained,
- (s) the officers who can certify certain matters,
- (t) savings and formal matters.

This Regulation is made under the *Bail Act 1978*, including section 69 (the general regulation-making power) and the sections referred to in this Regulation.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Bail Regulation 2008*.

2 Commencement

This Regulation commences on 1 September 2008.

Note. This Regulation replaces the *Bail Regulation 1999* which is repealed on 1 September 2008 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

apprehended domestic violence order has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

approved form means a form approved by the Attorney General for the purposes of the provision in which the expression occurs.

bail agreement means an agreement entered into in accordance with the conditions imposed on the granting of bail to an accused person.

bail decision, in respect of a domestic violence offence, includes the following:

- (a) a bail decision in respect of an application for an apprehended domestic violence order, if the defendant is (by section 83 of the *Crimes (Domestic and Personal Violence) Act 2007*) taken to be an accused person charged with an offence,
- (b) a bail decision in respect of an appeal against an apprehended domestic violence order, if the defendant is (by section 85 of that Act) taken to be an accused person who is in custody.

de facto partner, in relation to a person, means the other party to a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) with the person.

domestic violence offence has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

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Part 1 Preliminary

governor of a correctional centre means the superintendent, governor, gaoler or other officer for the time being in charge of the correctional centre.

registrar of a court includes the following:

- (a) a registrar of the Supreme Court,
- (b) the Registrar of the Court of Criminal Appeal,
- (c) the Registrar of the Land and Environment Court,
- (d) a registrar of the District Court,
- (e) a registrar of a Local Court,
- (f) a Children's Registrar (within the meaning of the *Children's Court Act 1987*).

the Act means the *Bail Act 1978*.

- (2) Notes included in this Regulation do not form part of this Regulation.

Part 2 General provisions respecting bail

4 Prescribed periods in respect of grant of bail

For the purposes of section 6 (h) of the Act, the following periods are prescribed periods:

- (a) the period between:
 - (i) the making of an application under section 246 (1) of the *Criminal Procedure Act 1986* with respect to a person, and
 - (ii) the person's being brought before a Judge of the Supreme Court as a consequence of the application,
- (b) the period between:
 - (i) the submission to the Court of Criminal Appeal for determination, under section 5AE of the *Criminal Appeal Act 1912*, of a question of law arising at or in reference to proceedings before the Supreme Court in its summary jurisdiction with respect to an accused person, and
 - (ii) the determination of the question by the Court of Criminal Appeal,
- (c) the period between:
 - (i) the proceedings for a back up offence or related offence being transferred under section 166 (1) (b) (ii) of the *Criminal Procedure Act 1986* from a Local Court to the court in which the person charged with the offence has been committed to trial, and
 - (ii) the person's appearance before the court in which he or she has been committed to trial,
- (d) the period between:
 - (i) a trial court remitting to a Local Court a back up offence or a related offence under section 169 of the *Criminal Procedure Act 1986*, and
 - (ii) the appearance of the person charged with the offence before the Local Court in relation to that offence.

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Clause 5 Bail Regulation 2008

Part 3 Police bail

Part 3 Police bail

5 Information respecting entitlement to, or eligibility for, bail

- (1) For the purposes of section 18 (1) (a) of the Act:
 - (a) the information in writing to be given to an accused person is the information set out in subclause (2), and
 - (b) the prescribed form of acknowledgement is the form set out in Schedule 1.
- (2) The information to be given is as follows:
 - (a) to a person who is accused of an offence to which section 8 of the Act applies—information to the effect that the person is entitled to be granted bail unless section 8 (2) (a) (i), (ii), (iii) or (iv) or (4) applies in the person's particular case (with details of those provisions being included in the information),
 - (b) to a person who is accused of an offence to which section 9 of the Act applies—information to the effect that the person is entitled to be granted bail unless section 9 (2) (a), (b) or (c) or (4) applies in the person's particular case (with details of those provisions being included in the information),
 - (c) to a person who is accused of an offence to which section 8A, 8B, 8C, 8D, 8E or 8F of the Act applies—information to the effect that there is a presumption against bail in the person's particular case.
- (3) The information is to be given in the approved form.

6 Prescribed facilities

- (1) For the purposes of section 21 of the Act, the prescribed facilities are as follows:
 - (a) facilities for an accused person to wash, shower or bathe and (if appropriate) to shave,
 - (b) facilities for an accused person to change clothing.
- (2) Nothing in this clause requires a police officer to provide clothing for an accused person unless the clothing is brought to the police station at which the person is in custody, whether by a member of the accused person's family or by some other person.

Part 4 Court bail

7 Manner of application in relation to bail

- (1) For the purposes of section 22 (2) of the Act, an accused person may apply to a court in relation to bail in the following manner:
 - (a) orally, if the person is at that time appearing before the court, or
 - (b) if the person is not appearing before the court, in writing in the approved form.
- (2) A written application in relation to bail may be signed by the accused person or, on the accused person's behalf, by his or her lawyer, spouse, de facto partner, parent or guardian.
- (3) A court may grant bail, review a bail decision or alter bail conditions even if the accused person has not complied with the provisions of subclause (1) or (2).
- (4) An accused person may, in one application, apply to a court for or in relation to bail in respect of more than one alleged offence.
- (5) If the accused person is in custody at a correctional centre, the governor of the correctional centre must forward the application, without undue delay, to the registrar of the court to which the application is made.

8 Notices withdrawing requests for review of court bail

For the purposes of section 25A (3) (b) of the Act, a notice that the Crown does not intend to proceed with a request for a review of a decision to grant bail may be filed with a Local Court.

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Part 5 Provisions applying to both police and court bail

Part 5 Provisions applying to both police and court bail

9 Notice of bail decisions in cases of alleged domestic violence offences

- (1) This clause applies to the following offences:
 - (a) a domestic violence offence,
 - (b) an offence of failing to comply with a restriction or prohibition specified in an apprehended domestic violence order.
- (2) The authorised officer or court granting or refusing bail in respect of an offence to which this clause applies must immediately give notice of the bail decision to the informant, unless the informant is a police officer.
- (3) The notice may be given personally or by post.
- (4) The notice must contain the information relating to the review of bail decisions specified in clause 29.
- (5) Any notice given of a decision to grant bail must specify the conditions imposed under section 36 of the Act on the granting of bail.
- (6) In this clause:

informant includes a protected person within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007*.

10 Notice of bail decisions in cases of alleged sexual assault and personal violence offences

- (1) As soon as practicable after a bail decision is made in respect of a sexual assault offence or a personal violence offence, the informant for that offence (being a police officer) must take appropriate steps to ensure that notice of the bail decision is given to the alleged victim of the offence or (if it is alleged that the victim died as a result of the offence) to a close relative of the alleged victim of the offence.
- (2) The notice may be given personally or by post.
- (3) Nothing in this clause affects the duty of an authorised officer or court to notify a bail decision to an informant under clause 9.
- (4) In this clause:

domestic relationship has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

personal violence offence has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

sexual assault offence means an offence under Division 10 (other than section 79 or 80) of Part 3 of the *Crimes Act 1900* or an offence under section 344A of that Act with respect to such an offence, but it does not

include any offence in the nature of an attempt (whether under section 344A or otherwise) unless the attempt involved an assault on a person.

victim, in relation to an offence under section 14 of the *Crimes (Domestic and Personal Violence) Act 2007* of contravening a prohibition or restriction specified in an order, means the person for whose protection the order was made.

- (5) In the definition of **sexual assault offence** in subclause (4), a reference to an offence under Division 10 of Part 3 of the *Crimes Act 1900* is taken to extend to a repealed offence that was contained in that Division if a bail decision relates to such an offence.

11 Bail undertaking and notice of hearing

- (1) Notice of the court in which a person has undertaken to appear, and of the time, date and place of that appearance:
- (a) may be included in a copy of the undertaking made by the person or a notice setting out the terms of the undertaking, and
 - (b) if it is so included, must be in the approved form and must be given personally to the accused person immediately after the accused person has given the undertaking.
- (2) A notice of the court in which a person has undertaken to appear, and of the time, date and place of that appearance:
- (a) may be given personally or by post, or
 - (b) may be given or sent in such other manner as the court before which the person is to appear may determine.

12 Acknowledgment as to acquaintance with accused person

- (1) For the purposes of section 36 (4) of the Act, an acknowledgment under section 36 (2) (b) must contain the following details:
- (a) the period during which the person making the acknowledgment has been acquainted with the accused person,
 - (b) the nature of that person's acquaintance with the accused person.
- (2) An acknowledgment under section 36 (2) (b) of the Act must be in the approved form.

13 Determination that person is an acceptable person

- (1) An authorised officer or court may refuse to make a determination that a person is an acceptable person for the purposes of a condition referred to in section 36 (2) (b), (d), (f) or (h) of the Act until the officer or court, on such evidence as appears to the officer or court to be sufficient, is satisfied as to the person's identity and residential address.

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- (2) Nothing in this clause limits the powers of an authorised officer or court in relation to the making of a determination as to whether a person is an acceptable person as referred to in section 36 of the Act.

14 Verification of person's capacity as an acceptable person

- (1) This clause applies to a person who claims:
- (a) to be an acceptable person referred to in a determination under section 36 (3) of the Act, or
 - (b) to belong to a class or description of acceptable persons referred to in such a determination.
- (2) Such a person must not be permitted to make an acknowledgment, enter into an agreement or deposit a security or amount of money unless the authorised officer or court before whom the person attends is satisfied:
- (a) that such a determination has been made, and
 - (b) that the person:
 - (i) is an acceptable person referred to in that determination, or
 - (ii) belongs to a class or description of acceptable persons referred to in that determination.

15 Information about special bail conditions

- (1) As soon as practicable after any bail condition is imposed on an accused person under section 37 (1) (b) of the Act for the purpose of the protection and welfare of any specially affected person, the informant for the offence (being a police officer) must take appropriate steps to ensure that notice of the imposition of the bail condition is given to the specially affected person.
- (2) The notice may be given personally or by post.

16 Reasons for bail decisions

- (1) The authorised officer or court making a bail decision must ensure that the reasons for the decision are endorsed in the approved form.
- (2) If the bail decision was made by an authorised officer, the authorised officer must immediately send the endorsed form, or a copy of the form, to the court before which the accused person is to appear.
- (3) If a bail decision is made in response to a bail application relating to more than one alleged offence, the reasons for the bail decision may be recorded on one form.

17 Acceptance of distant sureties

For the purposes of section 39 of the Act, a person who cannot reasonably attend (because of distance or for any other reason) before the authorised officer or court to whom a bail undertaking is given:

- (a) may enter into an agreement with, or
- (b) may make an acknowledgment to, or
- (c) may deposit a security or amount of money with, any other authorised officer or court.

18 Money or security

- (1) This clause applies to any security or amount of money that is deposited with an authorised officer or justice (elsewhere than at a court) under a bail agreement.
- (2) For the purposes of section 40 of the Act, the authorised officer or justice must, as soon as practicable, lodge the security or money, together with the relevant bail undertaking and bail agreement, with the registrar of a court.

19 Application by surety for discharge from liability in respect of bail undertaking

An application under section 42 (1) of the Act for discharge of liability under a bail agreement must be in the approved form.

20 Apprehension of accused person after application by surety for discharge from liability

A warrant issued under section 42 (2) (a) of the Act for the apprehension of an accused person must be in the approved form.

21 Written notice prior to revocation of bail

- (1) For the purposes of section 42B (3) (a) of the Act, the information to be contained in a written notice given to a person by a court under that section (being a notice of the court's intention to revoke the person's bail on the ground that the person's current bail security is no longer intact) is the following:
 - (a) the date on which the person was granted bail, and the offence or offences to which the bail relates,
 - (b) the reason for which the court considers that the current bail security is no longer intact,

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- (c) information to the effect that the court proposes to revoke the person's bail unless the person:
 - (i) demonstrates to the court that the current bail security is still intact, or
 - (ii) arranges for the deposit of replacement or supplementary security, whether by the person by whom the current bail security was deposited or by some other person,
 - (d) the date on which the court proposes to revoke the person's bail if neither of the things referred to in paragraph (c) is done, and the procedure to be followed if the person wishes to do either of the things referred to in that paragraph.
- (2) The written notice must be accompanied by a copy of the relevant bail agreement.

Part 6 Review of bail decisions

22 Request to review bail decision

- (1) A request for a review under Part 6 of the Act of a bail decision is to be made in the approved form.
- (2) A court may determine a request to review a bail decision even if the request does not comply with this clause.
- (3) On receipt of a request to review a bail decision, a court must give notice of the time and place of hearing to the applicant.
- (4) If an accused person does not appear at the hearing, the court, on proof of notice having been given to the person, may proceed to hear and determine the request.
- (5) A court may dispense with the giving of notice if it is satisfied that:
 - (a) the accused person is evading service or cannot be contacted, or
 - (b) the interests of justice so demand.
- (6) The Supreme Court must give notice to an applicant for review of a bail decision of its decision, under section 22A of the Act, to refuse to entertain the application.

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Part 7 Bail agreements

Part 7 Bail agreements

23 Appropriate State authorities

- (1) For the purposes of the definition of *appropriate State authority* in section 53 of the Act, the following persons and bodies are declared to be appropriate State authorities in relation to the forfeiture orders specified:
 - (a) the Commissioner of Police—in relation to a forfeiture order relating to bail money under a bail agreement for:
 - (i) an offence being prosecuted by a police officer, or
 - (ii) an offence being prosecuted by any other person (otherwise than on behalf of a public authority or the Director of Public Prosecutions) in a Local Court,
 - (b) the public authority concerned—in relation to a forfeiture order relating to bail money under a bail agreement for an offence being prosecuted by or on behalf of a public authority,
 - (c) the Director of Public Prosecutions—in relation to a forfeiture order relating to bail money under a bail agreement for:
 - (i) an offence being prosecuted by or on behalf of the Director of Public Prosecutions, or
 - (ii) an offence being prosecuted by any other person (other than a police officer and otherwise than on behalf of a public authority) in any court other than a Local Court.
- (2) In this clause, *public authority* means the Crown, a Minister of the Crown or a statutory body representing the Crown, and includes a council or county council within the meaning of the *Local Government Act 1993*.

24 Written notice concerning making of forfeiture order

- (1) For the purposes of section 53B (2) (a) of the Act, the information to be contained in a written notice given to a person affected by a forfeiture order (being a notice to the effect that the order has been made) is the following:
 - (a) the terms of the order and the date on which it was made,
 - (b) information to the effect that a person affected by the order may object to the confirmation of the order,
 - (c) the date on which the order will be confirmed if no objection is made,
 - (d) the procedure to be followed if the person wishes to object to the confirmation of the order.

- (2) The written notice must be accompanied by a copy of the relevant bail agreement.

25 Giving of notice to appropriate State authority

- (1) For the purposes of section 53C (4) of the Act, the manner in which a Local Court must give notice of an objection to the appropriate State authority is by means of a written notice sent to the authority.
- (2) The written notice must set out the date fixed for the hearing of the objection (if such a date has been fixed) and must be accompanied by a copy of the objection as filed in the court.

26 Giving of notice to appropriate State authority

- (1) For the purposes of section 53E (2) of the Act, the manner in which a court must give notice of an objection to the appropriate State authority is by means of a written notice sent to the authority.
- (2) If a representative of the appropriate State authority is appearing before the court when the objection is made, notice of the objection may instead be given to the authority by means of an oral statement to the representative.
- (3) The notice or statement must indicate the date fixed for the hearing of the objection (if such a date has been fixed) together with particulars of the objection.

27 Written notice concerning taking effect of forfeiture order

- (1) For the purposes of section 53H (2) (a) of the Act, the information to be contained in a written notice given to a person affected by a forfeiture order (being a notice to the effect that the order has taken effect) is the following:
 - (a) the terms of the order and the date on which it was made,
 - (b) information to the effect that the order has taken effect,
 - (c) the person's obligations under the Act with respect to the payment of bail money forfeited by the order,
 - (d) information to the effect that the person may apply to have the order set aside,
 - (e) the procedure to be followed if the person wishes to apply to have the order set aside.
- (2) The written notice must be accompanied by a copy of the relevant bail agreement.

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Part 8 Miscellaneous

Part 8 Miscellaneous

28 Notice required to be given on adjournment

A notice given under section 54 (4) of the Act of the time and place to which proceedings have been adjourned must be in the approved form.

29 Notice required to be given to accused person regarding review of bail decision

For the purposes of section 54 (5) of the Act, the information in writing to be given to an accused person is the following:

- (a) an explanation of the meaning of “bail decision” for the purposes of a review,
- (b) information specifying the courts or persons that may review bail decisions (including the circumstances in which a decision of the Supreme Court may be reviewed by another court or person),
- (c) information specifying the persons who may request a review of a bail decision,
- (d) information relating to the special limited review of bail conditions provided for in section 48A of the Act in respect of persons granted bail who remain in custody because of their inability to meet a condition of the bail,
- (e) information relating to the special limited review of bail reporting or residence conditions provided for in section 48B of the Act,
- (f) details of the way in which an accused person may request a review of a bail decision,
- (g) information to the effect that a court reviewing a bail decision may confirm or vary the decision or give a new decision.

30 Notice by custodian of person in custody after grant of bail

For the purposes of section 54A (6) of the Act, a notice for the purposes of section 54A of the Act must be given in the approved form.

31 Particulars of orders in bail decisions

- (1) If an accused person is, as a consequence of a bail decision, committed to a correctional centre by warrant, the court, Judge, magistrate, justice or other person issuing the warrant must cause the required particulars to be endorsed on the form of warrant.
- (2) If an accused person is, as a consequence of a bail decision, committed to a correctional centre otherwise than by warrant, the court must cause the required particulars to be notified to the governor of the correctional centre to which the accused person is committed.

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- (3) If an accused person is held in custody as a consequence of a bail decision and, as a consequence of a further bail decision, bail is granted, refused or dispensed with in respect of the offence concerned, the court must cause the required particulars to be notified to the governor of the correctional centre at which the accused person is in custody.
- (4) The required particulars are particulars of any order in the bail decision respecting:
- (a) the grant, refusal or dispensation of bail in respect of the offence concerned, and
 - (b) any conditions imposed under the Act on the grant of bail, and
Note. See Division 3 of Part 5 of the Act.
 - (c) any determination as to:
 - (i) the person or persons, or the class or description of persons, acceptable for the purposes of a condition of bail as referred to in section 36 (2) (b), (d), (f) and (h) of the Act, and the number of acceptable persons required for those purposes, and
 - (ii) the nature and sufficiency of security that is acceptable security for the purposes of a condition of bail as referred to in section 36 (2) (e) and (f) of the Act.

32 Notification of bail undertaking or of compliance with bail conditions

- (1) This clause applies:
- (a) if an accused person is in custody as a consequence of a bail decision, and
 - (b) if the person subsequently gives a bail undertaking, and
 - (c) if all bail conditions are complied with such that the person may be released from custody in respect of the offence.
- (2) The authorised officer or court before whom or which the bail undertaking is given and bail conditions entered into must immediately notify the governor of the correctional centre at which the accused person is detained of the person's giving of the bail undertaking and of the person's compliance with the bail conditions.

33 Prescribed officers

For the purposes of section 60 (3) (a) and (b) of the Act, the following are prescribed officers:

- (a) a Judge,
- (b) a magistrate,
- (c) an authorised justice,

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Part 8 Miscellaneous

- (d) a registrar of a court,
- (e) an authorised officer.

34 Savings

- (1) Any act, matter or thing that, immediately before the repeal of the *Bail Regulation 1999*, had effect under that Regulation continues to have effect under this Regulation.
- (2) Until such time as the Attorney General determines otherwise, a form that, immediately before the repeal of the *Bail Regulation 1999*, was prescribed under that Regulation is taken to be an approved form for the purposes of the relevant provisions of this Regulation.

Schedule 1

Form of acknowledgment that information about bail was given to accused person

(Clause 5 (1) (b))

I,

(name)

of

(police station)

acknowledge that I gave

(accused person)

charged with

(offence)

the information about bail that is required by clause 5 (2) of the *Bail Regulation 2008*.

Signature of proper officer:

Place at which form signed:

Date: